

# **Exhibit 1**

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5 -and-

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10 Attorneys for Plaintiff and Counter-Defendant  
ALL NIPPON AIRWAYS COMPANY, LTD.

12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA

14 ALL NIPPON AIRWAYS COMPANY,) LTD.,

15 Plaintiff,

16 vs.

17 UNITED AIR LINES, INC.,

18 Defendant.

19 AND RELATED COUNTER-CLAIM  
20

Case No. C07-03422 EDL

**DECLARATION OF  
MARSHALL S. TURNER  
IN SUPPORT OF  
MOTION OF ALL NIPPON  
AIRWAYS COMPANY, LTD. TO  
COMPEL DISCOVERY**

**Hearing Date: March 11, 2008  
Hearing Time: 9:00 a.m.  
Hearing Place: Courtroom of Hon.  
Elizabeth D. Laporte**

22 **DECLARATION OF MARSHALL S. TURNER**

23 Marshall S. Turner, being duly sworn, deposes and says:

24 1. I am an attorney and a member of the law firm of Condon & Forsyth LLP,  
25 attorneys for plaintiff All Nippon Airways Co., Ltd. ("ANA") in the above-  
26 captioned matter. I make this declaration in Support of Motion of ANA to Compel  
27 Discovery.

28 2. ANA served its First Set of Document Requests to UAL on November 15,

1 2007. Attached hereto as Exhibit A is a true and correct copy of ANA's First Set  
2 of Document Requests to UAL. Attached hereto as Exhibit J is the Narrative of  
3 the Interview of Edward Loh, which served as a basis for various requests in  
4 ANA's First Set of Document Requests to UAL.

5 3. UAL served its Answers to Plaintiff's First Set of Document Requests on  
6 December 18, 2007. Attached hereto as Exhibit B is a true and correct copy of  
7 UAL's Answers to Plaintiff's First Set of Document Requests. UAL's responses  
8 consisted only of boilerplate objections and UAL did not produce a single piece of  
9 paper in response to these requests.

10 4. UAL failed to produce documents in response to requests seeking  
11 documents concerning UAL employees directly involved in the Accident.  
12 However, UAL requested these same documents from ANA. Attached hereto as  
13 Exhibit C is a true and correct copy of UAL's First Request to Produce.

14 5. In its Requests, ANA seeks documents concerning the Standard Ground  
15 Handling Agreement ("SGHA") which UAL has repeatedly alleged is central to  
16 UAL's claims and defenses. Despite being a party to the SGHA, which bears  
17 "United Contract No. 108536-17," UAL has not produced a single document with  
18 respect to the SGHA and refers only to the SGHA itself, the only copy of which  
19 has been produced by ANA. Exhibit B.

20 6. UAL did not produce a single document in response to any other Request  
21 made by ANA, including Request Nos. 1, 13, 14, 15, 16, 17, 18, 22, 23, 24, 26, 27,  
22 28, 29, 41, and 42. Exhibit B.

23 7. ANA served its Second Set of Document Requests to UAL on December  
24 18, 2007. Attached hereto as Exhibit D is a true and correct copy of ANA's  
25 Second Set of Document Requests to UAL.

26 8. UAL served its Responses to ANA's Second Set of Document Requests on  
27 January 16, 2008. Attached hereto as Exhibit E is a true and correct copy of  
28

1 UAL's Responses to ANA's Second Set of Document Requests.

2 9. ANA requested documents concerning UAL policies, procedures, and  
3 operations for all actions relevant to the Accident, including but not limited to  
4 Ramp Tower G, pushback, and taxi; the training records and training materials of  
5 the UAL employees involved in the Accident; the UAL operations manual; and  
6 dispatch documents. Exhibit E. UAL has not produced any responsive document.

7 10. ANA served Notices of Deposition and document requests addressed to  
8 UAL employees who were involved in the events surrounding the Accident,  
9 including Captain John Rediger, First Officer Scott Russell, Relief Pilot Brad  
10 Powell, ramp controller Edward Loh, and tug driver Julio Hernandez. Attached  
11 hereto as Exhibit F are true and correct copies of ANA's Notices of Deposition to  
12 UAL employees.

13 11. In response to these requests, UAL provided baseless objections, referred  
14 to documents which are not responsive to the requests, and referred to documents  
15 which UAL has failed to produce. Attached hereto as Exhibit G are true and  
16 correct copies of UAL's Responses to ANA's Notices of Deposition.

17 12. In addition, Captain Rediger testified with respect to the existence of  
18 responsive documents that were not previously identified by and have not been  
19 produced by UAL. Attached hereto as Exhibit H is a true and correct copy of the  
20 relevant pages of transcript of Captain Rediger's deposition. These documents  
21 include UAL's flight plan, the report made on UAL's website ("Skynet"), and  
22 Captain Rediger's notes on the Accident. Exhibit H, 88:11-24, 89:17-90:10,  
23 103:4-9.

24 13. ANA made a good faith effort to resolve the issues addressed herein  
25 pursuant to the meet and confer required by Rule 37 of the Federal Rules of Civil  
26 Procedure and Local Rule 37-1. In addition to numerous emails, correspondence,  
27 and verbal requests for these documents, Scott Cunningham of my firm and I met  
28

1 with UAL's counsel Scott Torpey and Jeffrey Worthe, along with UAL in-house  
2 lawyer Steve Fus, on January 23 and January 24, 2008.

3 14. During the meet and confer, counsel for UAL stated that searches would be  
4 made for various documents, but not a single piece of paper has been produced and  
5 no explanation has been offered. Attached hereto as Exhibit I is a true and correct  
6 copy of ANA's letter of January 30, 2008 detailing the documents which UAL  
7 agreed to produce during the meet and confer.

8 15. In accordance with the foregoing and ANA's Brief in Support of Motion of  
9 ANA to Compel Discovery, UAL should be compelled to produce documents  
10 responsive to ANA's requests and should be precluded from future reference to  
11 any document not timely produced.

12 I declare under penalty of perjury under the laws of the United States of  
13 America that the foregoing is true and correct.

14 Executed this 1<sup>st</sup> day of February, 2008, at New York, New York.

15  
16   
17 Marshall S. Turner

18 Sworn to before me this  
19 1<sup>st</sup> day of February, 2008

20   
21 Notary Public

22 **Timothy H Eskridge**  
23 **Notary Public State of N.Y.**  
24 **02ES6121835**  
25 **Qualified in New York County**  
26 **Commission Expires January 31 2009**